

Fletcher Hartwell Hyler, in propria persona
Sheryl Root Hyler, in propria persona
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FILED
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RICHARD W. WELLS
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**FLETCHER HARTWELL HYLER AND
SHERYL ROOT HYLER,**
Plaintiff,

vs.

**INVESTMENT GRADE LOANS, INC., ET
AL.,**
Defendant

Case No.: A07-CV-03180 WHA
DECLARATION OF FLETCHER
HARTWELL HYLER IN SUPPORT OF
REPLY MEMORANDUM ON
FED.R.CIV.PROC. 60(b)(3) MOTION TO
SET ASIDE JUDGMENT AND IN
OPPOSITION TO MOTION TO
EXPUNGE LIS PENDENS
DATE: August 28, 2008
TIME: 8:00 a.m.
COURTROOM: 9
JUDGE: Hon. William A. Alsup

I, Fletcher Hartwell Hyler, hereby declare as follows:

1. It is my understanding that pursuant to the federal Truth in Lending Act ("TILA"), if I prevail in this action I will be entitled to damages for my attorneys' fees expended, and for my out-of-pocket expenses incurred in contesting Defendants' foreclosure proceedings and unlawful detainer proceedings, and in conjunction with being wrongfully evicted from my home. To date, I estimate that these damages are nearly equal to the principal balance of the loan which I took out from Defendants. Moreover, it is my understanding that, if I prevail, Defendants will not be entitled to collect interest on the loan. *See*, 15 U.S.C. §§ 1601 *et seq.*
**DECLARATION OF FLETCHER HARTWELL HYLER
IN SUPPORT OF REPLY MEMO. ON FRCP 60(b)(3)
MOT. TO SET ASIDE JUDGMENT AND IN OPP. TO
MOT. TO EXPUNGE LIS PENDENS**

1 2. Defendants have characterized Exhibit "A" to the Declaration of Michael E. Stone in
2 Support of Motion to Expunge Lis Pendens and Award of Attorney's Fees and Costs as a
3 novation or affirmation of the Settlement Agreement attached as Exhibit "F" to my Declaration
4 of Fletcher Hyler in Support of Motion to Set Aside Judgment submitted with my moving
5 papers. This is simply not an accurate characterization. The option period under that Exhibit "F"
6 had expired by the time that I executed that Exhibit "A" (not that I would have been entitled to
7 the option anyway if Exhibit "F" were valid, since I had not finished paying for it), so I had to
8 pay new money for a new option in that Exhibit "A." Regardless of that fact, nothing in that
9 Exhibit "A" had anything to do with releasing Defendants or dismissing the above-captioned
10 action, and consequently cannot be deemed to have affirmed that Exhibit "F".
11

12 3. Defendants have referred to my appeal of the order evicting my wife and I from the
13 subject property in an unlawful detainer proceeding distinct from this action. So that their
14 characterization does not unfairly prejudice this Court, I note that: (1) There was no
15 "Stipulation" in the unlawful detainer action as claimed by Defendants; rather, it was anticipated
16 that a written settlement agreement would be entered, but never was due to disagreement as to
17 some of the proposed terms and conditions thereof; (2) based on the non-existent "Stipulation"
18 Defendants obtained an *ex parte* order of eviction, but failed to give proper notice of the *ex parte*
19 hearing to Plaintiffs' counsel, who consequently did not attend; and (3) based on the foregoing
20 and the tenor of the judges' questions at the hearing on the appeal of that decision, it is apparent
21 that the decision will be reversed on appeal. With respect to the first of these points, attached
22 hereto as Exhibit "A" is a true and correct copy of the transcript of the proceedings at the
23 settlement conference which resulted in a tentative agreement that Defendants later falsely
24 characterized to that Court (and to this Court) as a "Stipulation." As is apparent from comparing
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1 that misrepresentation to that Court to their misrepresentations to this Court, Defendants have
2 maintained a consistently unethical approach to their litigation strategy.

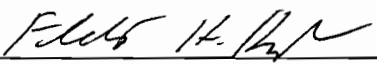
3 4. I made application for the loan which is the subject of this action between
4 approximately December 15, 2003 and January 15, 2004. My research has revealed that on
5 December 15, 2003, the rate for 5 year Treasury securities was 3.26% and on January 15, 2004
6 the rate for 5 year Treasury securities was 2.97%.

7 5. I never received any communication from anyone, Mr. Stone or anyone else, of any
8 procedural infirmities with respect to either the July 23, 2008 Notice of Pendency of Action, or
9 the subsequent July 30, 2008 Notice of Pendency of Action which I did have recorded and filed
10 with this Court, prior to receiving Mr. Stone's motion to expunge. Had I received such notice of
11 infirmities, I would have released the recorded notice and proceeded to correct any infirmities
12 through a new notice. Consequently, no attorneys' fees were reasonably expended by
13 Defendants in preparing any motion to expunge.

14 6. I engaged an attorney with in excess of 20 years of litigation experience, located in
15 Palo Alto, California, to prepare my opposition to the Motion to Expunge Notice of Lis Pendens.
16 That attorney has expended three hours in preparing my opposition and bills me at a rate of
17 \$350.00, which is a rate I know to be reasonable for an attorney of his experience located in Palo
18 Alto.

19 I swear and affirm the foregoing is true and correct under penalty of perjury pursuant to
20 the laws of the State of California.

21 Dated: 8/9/08

22 
23 Fletcher Hartwell Hyler,

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26 **DECLARATION OF FLETCHER HARTWELL HYLER
IN SUPPORT OF REPLY MEMO. ON FRCP 60(b)(3)
MOT. TO SET ASIDE JUDGMENT AND IN OPP. TO
MOT. TO EXPUNGE LIS PENDENS**

Exhibit A

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN MATEO

3 ---oOo---

4
5 , INVESTMENT GRADE LOANS, INC.,)

6 Plaintiff,)

7 vs.)

8 FLETCHER HARTWELL HYLER, et al.,)

9 Defendant.)

) No. CLJ 195919

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE SUSAN GREENBERG, JUDGE PRO TEM

16 DEPARTMENT 32

17 DECEMBER 3, 2007

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19 A P P E A R A N C E S:

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21 For the Plaintiff: MICHAEL E. STONE, Attorney at Law

22
23 -- For the Defendant: SUSAN J. BAYERD, Attorney at Law

24
25 Reported by: ROXANNE SAN MIGUEL, CSR 10884

26
Exhibit "A"

P R O C E E D I N G S

DECEMBER 3, 2007

REDWOOD CITY, CALIFORNIA

---oOo---

THE COURT: Line 2 for Investment Grade Loans and Fletcher Hyler.

MS. BAYERD: Good morning, Your Honor.

THE COURT: Good morning.

MS. BAYERD: Susan Bayerd for the Hylers.

MR. STONE: Michael Stone for the plaintiffs.

THE COURT: Good morning. And have you completed your stipulation?

MS. BAYERD: Yes.

MR. STONE: The stipulation, Your Honor, is that the defendants, Mr. and Mrs. Hyler, will be given one week to December 10th to come up with \$100,000 delivered to my office in certified funds. If they come up with that money, then I will be dismissing this complaint. If they fail to come up with that money, then the plaintiffs are entitled to judgment for immediate possession upon an ex-parte application.

Also, part of the settlement is if they do come up with the money by December 10th, they will then have until January 9th, 30 days from December 10th, to come up with the balance of the settlement payment according to Exhibit B to the complaint, which was a settlement agreement arrived at after the title case. If they come up with it, then Mr. Hyler has

1 the option of whether or not to have the sale -- the
2 foreclosure sale -- rescinded, and reinstatement will reconvey
3 the deed of trust, or to take a deed to the property as a sale.
4 That's part of the settlement agreement is retaining that
5 option if he comes up with the balance of the settlement.

6 THE COURT: By January 10th?

7 MR. STONE: By January 9th.

8 THE COURT: Oh, 9th.

9 MR. STONE: Both sides will pay their own
10 attorney's fees and costs in this case.

11 THE COURT: Ms. Bayerd, is that your understanding
12 of the agreement?

13 MS. BAYERD: Yes, it is.

14 THE COURT: You guys are going to put this down in
15 writing?

16 MR. STONE: I'm sorry, Your Honor?

17 THE COURT: You are going to reduce this to a
18 written stipulation?

19 MR. STONE: I think I would rather reduce it to a
20 court order upon stipulation, send it to Ms. Bayerd for
21 approval, and then to you to sign.

22 THE COURT: Good. That's what I meant. So that's
23 fine. We've got it in January. I've got my notes as to all
24 the details you just specified. So go ahead and put it in
25 writing, and after it has been approved, send it to me for
26 approval.

1 MR. STONE: Thank you, Your Honor.

2 MS. BAYERD: Thank you.

3 THE COURT: Thank you both.

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5 , (Whereupon, the proceedings were concluded.)

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1 STATE OF CALIFORNIA.)
2 COUNTY OF SAN MATEO) ss.
3)
4)

5 REPORTER'S CERTIFICATE
6

7 I, ROXANNE SAN MIGUEL, an Official Reporter of the
8 Superior Court, State of California, County of San Mateo,
9 Certificate No. 10884, do hereby certify that the foregoing is
10 a full, true, and correct statement of the testimony and
11 proceedings had in the within-entitled matter, and that the
12 same is a full, true, and correct transcription of the
13 shorthand notes as taken by me in said matter.

14 Dated in Redwood City, California, this 26th day of
15 December, 2007.
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20 _____
21 ROXANNE SAN MIGUEL
22 OFFICIAL REPORTER
23
24
25
26

PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Dalmatian Courier, 4546 El Camino Real, Ste. 262, Los Altos, CA 94022. On August 13, 2008, I served the foregoing documents described as **DECLARATION OF FLETCHER HARTWELL HYLER IN SUPPORT OF REPLY MEMORANDUM ON FED.R.CIV.PROC. 60(b)(3) MOTION TO SET ASIDE JUDGMENT AND IN OPPOSITION TO MOTION TO EXPUNGE LIS PENDENS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Leo B. Siegel
16 Waugh Road
Royal Oaks, California

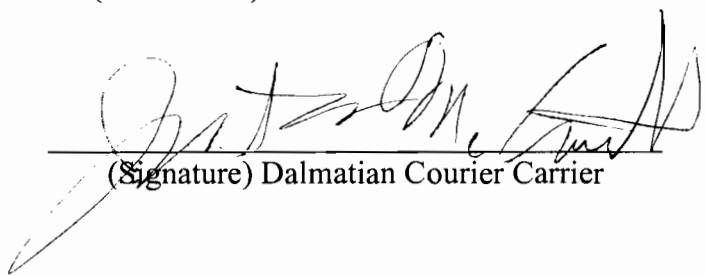
Michael E. Stone
Law Office of Michael E. Stone
3425 S. Bascom Avenue, Ste. I
Campbell, CA 95008

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of party service, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 13, 2008, at Palo Alto, California.



(Print Name) Dalmatian Courier Carrier



(Signature) Dalmatian Courier Carrier